



Department for Levelling Up,
Housing & Communities

Kemi Badenoch MP

*Joint Minister of State for Equalities and
Levelling Up Communities*

**Department for Levelling Up,
Housing and Communities**

4th Floor, Fry Building
2 Marsham Street
London SW1P 4DF

www.gov.uk/dluhc

Email:
kemi.badenoch@communities.gov.uk

William Wragg MP
Chair, Public Administration and
Constitutional Affairs Committee
House of Commons
London
SW1A 0AA

By email to:
pacac@parliament.uk

7 October 2021

Dear William,

Elections Bill: Follow up to the oral evidence of 14th September

Thank you for your letter of 23 September 2021 on the Elections Bill, addressed to the Secretary of State. I am responding as the Minister with responsibility for the Elections Bill. I have addressed the questions in your letter below, taking each topic in turn. I would also like to take this opportunity to thank you for your engagement on the proposals in the Bill.

Consultation and parliamentary scrutiny of the Bill

The Bill implements a number of Government manifesto commitments: it has always been the case that an incoming government has a democratic mandate to deliver its manifesto proposals.

In turn, the vast majority of the measures in this Bill are long established commitments, a number of which have stemmed from reports and reviews conducted by Parliamentarians as well as a range of Government consultations (including measures on accessibility, overseas electors, digital imprints, intimidation). They are also part of an extensive programme of work in which we have taken time to consult and listen to the input and experience from key stakeholders, including electoral administrators, the Parliamentary Parties Panel, representative organisations and local authorities. All of these measures will be implemented in a thorough and considered way, and we welcome the continued input of Parliament.

I do not share the view that passage of the Bill has been rushed; following its introduction on 5 July, it has received Second Reading and is now in Committee Stage

with twelve scrutiny sessions scheduled in addition to four evidence sessions. While there are no hard and fast rules in this space, I cannot accept that this is unduly hurried.

Post-legislative scrutiny

As Chloe Smith highlighted to the Committee, it is standard practice for the Government to conduct post-legislative scrutiny of Acts following Royal Assent, so it would not be necessary for the Bill to be amended to include a specific provision to this effect. Moreover, in order for post-legislative scrutiny to be able to effectively review the impact of the legislation, it will be important to allow time for elections to take place. A specific statutory requirement risks not allowing for the necessary flexibility to report following elections as they happen.

Consultation with the devolved administrations

Extensive engagement took place with the devolved administrations from the start of the year in preparing the policies for drafting into legislation. Officials began sharing draft clauses of the Bill on 29 April. Taking into account feedback received where appropriate, officials further continued to share updated draft clauses until a full version of the Bill and explanatory notes were shared with the devolved legislatures on 29 June, alongside letters seeking legislative consent for the measures in the Bill where relevant.

This Government remains fully committed to the Sewel Convention and the associated practices for seeking legislative consent, as well as to working closely with the devolved administrations to ensure that wherever possible we can provide consistency for electoral administrators and voters, and clarity where there is divergence.

Voter Identification

Evidence from Northern Ireland

Voter fraud data

The Electoral Commission collates, and publishes on their website, data on allegations of electoral fraud from all police services across the UK. The data published on the Commission website shows that the Police Service for Northern Ireland received no allegations concerning voting fraud in the period 2018 to 2021. In 2017 there were 10 alleged cases of voter fraud, of which nine related to proxy voting. At the time, in six of those cases no further action was taken, prosecution advice was awaited in two cases, and in the remaining case the investigation was ongoing. We do not hold data for allegations of voter fraud from before 2017, but as the Electoral Commission's own words stated: "*since the introduction of photo identification in Northern Ireland there have been no reported cases of personation*" (Electoral Commission, December 2015).

In relation to the impact which introducing photo identification has had on voter fraud in Northern Ireland, the House of Commons Northern Ireland Affairs Committee Electoral¹_Registration in Northern Ireland First Report of Session 2004–05 reported that:

‘ The percentage of presiding officers who reported having seen people voting more than once under different names had decreased from 3% in 2001 to 0.1% in 2003. The proportion who had experience of voters being turned away because someone had already voted in their name had declined from 4% to 1%, and the proportion who had been presented with ID documents which they suspected to be forgeries had dropped from 3% in 2001 to 0.2% in 2003... The Electoral Fraud Act (Northern Ireland) 2002 has been successful in reducing both the perception among the electorate of the prevalence of fraud and the actual level of electoral fraud... The measures introduced in the Act have served to increase the level of public confidence in the integrity of the electoral process.’

Having provided the data above, it is still important to note the difficulty in assessing the impact of the voter identification requirement on actual fraudulent activity, a fact acknowledged by the publications reviewed (Electoral Commission, 2003). This is because these activities are by definition secretive. This means that observed cases of electoral fraud may not account for all cases of fraud, and it is difficult to assess whether observed cases (e.g. by law enforcement) is a reliable proxy for actual cases.

Monitoring of the impact of voter identification in Northern Ireland

The photographic voter identification system has been in place in Northern Ireland for almost 20 years and like all other established aspects of elections it is monitored by the Electoral Commission. This monitoring is ongoing, and as part of their routine post-election questionnaire in 2019 the Commission reported that 83% of voters in Northern Ireland found it ‘very easy to participate in the elections’ as opposed to 78% in Great Britain elections.

In their Public Opinion tracker 2021² the Electoral Commission recorded not a single Northern Ireland respondent reporting ‘*I don’t have any identification/ I would not be able to vote*’³.

The Electoral Commission and all Northern Ireland parties are fully supportive of the system in Northern Ireland and there is no evidence voter identification has resulted in a fall in turnout. In a pattern of turnout for UK-wide General Elections, where Northern

¹ <https://publications.parliament.uk/pa/cm200405/cmselect/cmniaf/131/131.pdf>

² https://www.electoralcommission.org.uk/sites/default/files/2021-06/2021%20Winter%20Tracker%20Historical%20Data_data%20tables%20v2.0%20n2.xlsx

³ Q15C_NI. ‘Does the requirement to take photographic identification (acceptable ID specified below) to the polling station make you more or less likely to vote or does it make no difference?’

Ireland is almost always lower than Great Britain, two of the very few occasions when it has been higher have been either side of the introduction of photographic identification.

Concerns over the impacts of voter identification echo some of the alarmism seen when this Government successfully introduced individual electoral registration. Many Opposition Members claimed that it would result in mass disenfranchisement, but we saw the effect in the last UK general election, when a record number of people were registered to vote. We would expect this to be the case again in relation to identification.

Northern Ireland Electoral Cards

Since 2003 the Electoral Office for Northern Ireland has issued 369,272 Northern Ireland Electoral Cards. However, there is no available data on the number of duplicate or replacement cards issued within that number and so it is not possible to give a figure for the number or percentage of current electors holding a card. It is also important to note the different approach we are taking with the Voter Card when compared to the Northern Ireland Electoral Card. As electors will only be encouraged to apply for a Voter Card if they do not already have an acceptable form of photo identification, we expect that the uptake will be significantly lower than the Northern Ireland experience; as research has already shown, 98% of electors already own an acceptable form of photo identification.

Further detail on voter identification policy

Relevant offence for voting with fake identification

As well as involving offences relating to the possession or use of false identification documents (depending on the type of document), I can confirm that voting with fake identification relating to another person would be a crime of personation: under section 60(2)(a) of the Representation of the People Act 1983, personation is an offence committed where someone votes, or applies for a ballot paper, as another person (whether real or fictional).

Validity of youth passes and concessional railcards as identification

The Bill sets out clearly which categories of documents will be accepted as proof of identity for the purposes of voting at polling stations in Schedule 1. These categories have been selected as they meet a high standard of security and are widely used among the population. Youth PASS cards (including for instance the Young Scot card) are part of this list. Railcards are not included as varying eligibility requirements, which

may require no documentation to support evidence of identity at all, mean that they are not suitably secure.

The Bill ensures it will be possible for the Government, via affirmative secondary legislation, to add further forms of identification to the list in the future where it considers them to be secure. However, as demonstrated during the voter identification pilots, evidence shows that adding further forms of identification to the list could greatly increase the burden on administrators, including the time needed for checks. It is therefore important that categories of acceptable identification are only changed in response to clear needs. During the 2018 pilots where Railcards were accepted, these were only used by 0.1% of the total number of electors, compared to 12% who used an older person's bus pass. So, there is no evidence at present that there is a need to include further concessionary travel passes in the Schedule.

Costs if 31% of voters apply for a Voter Card

To be clear, we do not have concerns with the survey that produced the 31% figure. The concerns raised were about the interpretation of certain findings as it is important to keep the context of the questions asked in mind when using the results.

Whilst the Cabinet Office research indicated that 31% of people would be likely to apply for a Voter Card, respondents were not made explicitly aware at that point that only those electors without an accepted form of identification would need to apply for a Voter Card. Only 2% do not hold an approved form of identification therefore the 31% figure is not one that we consider suitable for projected costs.

We estimate take-up of the Voter Card will be between 0.1-4% of the electorate, based on the data from the Cabinet Office research as well as a wide range of other evidence, including data from the 2018 and 2019 pilot evaluations, the Electoral Commission's 2021 public opinion tracker, and our own fieldwork.

The Government will work closely with the Electoral Commission as well as other stakeholders in the electoral sector, charities and civil society organisations, to ensure that the electorate understands the new requirements and the purpose of Voter Cards.

Proxy voting

As Chloe Smith highlighted in her evidence before the Committee, there is no central record of persons who have been appointed to act as a proxy for another elector, outside of Northern Ireland.

Local authorities hold the data of who is a proxy in their areas, and they do not hold the data for who is also a proxy for electors in other areas. It is therefore not currently possible to provide this information.

Overseas voters

The proposals in this Bill will make it easier for expats to participate in elections by ensuring that they can remain registered for longer with an absent vote arrangement in place.

In fact, the Bill will extend the registration period for overseas electors from one year to up to three years - and electors will be able to refresh their absent vote arrangements at the same time as renewing their registration.

The Electoral Commission

Monitoring Impacts on Public Confidence in the Commission

As with any primary legislation initiated by the Government, we are committed to monitoring the impact of the measures relating to the Electoral Commission against the key policy objectives on a number of relevant indicators. This is reflected in the Impact Assessment published alongside the Bill. These may include, but are not limited to, parliamentarians' and the public's confidence in the integrity of elections and the regulator, and the level of accountability of the Commission to the UK Parliament.

As mentioned by the Minister in her evidence before the Committee on 14 September, the Electoral Commission already measures as part of its yearly Public Opinion Tracker⁴ public confidence in the running of elections and public perceptions of the Commission.

Strategy and Policy Statement

Duties

The duties being placed on the Commission by clause 12 of the Elections Bill are two-fold. Firstly, new section 4B(2) introduces a requirement for the Commission to have regard to the Statement in the discharge of its functions. This means that when carrying out its functions the Commission will be required to consider the Statement and weigh it up against any other relevant considerations. It works in similar ways to other existing statutory duties which require public bodies to 'have regard' to specific considerations in the carrying out of their functions. This duty does not replace or undermine the Commission's other statutory duties.

Legal Status of the Illustrative Strategy and Policy Statement

As noted in your letter, on the 15th of September the Government deposited in the Libraries of both Houses an illustrative example of a Strategy and Policy Statement for the Commission. The Committee will be aware it is common practice for the Government to provide illustrative drafts of guidance or regulations where this will aid Parliamentary scrutiny and the draft Statement is entirely in line with this. As explained

⁴<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/public-attitudes>

in the Government's Statement on Election Finance and Policy (HCWS290)⁵ laid on the same day, this illustrative Strategy and Policy Statement is aimed at supporting parliamentarians' understanding of the Bill's measures relating to the Electoral Commission by setting out an example of priorities and principles that the Government is currently minded to include in the Statement (pending and without prejudicing the outcome of a statutory consultation and parliamentary approval). We will also engage with the Parliamentary Parties Panel on the drafting.

This means, as indicated by its name, that this illustrative Statement is merely a draft and that it has not undergone the consultation, designation and parliamentary approval processes provided by the Bill (which could not be fulfilled before the Bill receives Royal Assent). The Commission is therefore not under any legal duty to have regard to the illustrative Statement in the discharge of its functions. I also wish to take this opportunity to reiterate that, as expressed on many occasions by Chloe Smith, the Government is clear that the Bill already contains the required safeguards to ensure that the final Statement (once approved by Parliament) will respect the operational independence of the Commission and will not affect the ability of the Commission to undertake enforcement activity as they see fit, having had regard to the Statement.

Powers of the Secretary of State

Clause 4C(3), states that the Secretary of State must make whatever changes to the draft Statement they consider "necessary" in light of responses to the consultation, and your question on why "necessary" is not defined in the legislation. This wording reflects standard wording used in primary legislation to describe the use of ministerial powers and refers to a situation where the Secretary of State is of the opinion that changes to the Statement may be necessary before laying it for parliamentary approval. It is not common to define in primary legislation words that are used in their ordinary meaning as is the case here.

With respect to the power for the Secretary of State to disapply consultation requirements, under clause 12 (new section 4D), at a minimum every five years since the previous statutory consultation took place, the Secretary of State will be required to review and determine whether to revise or withdraw the existing Strategy and Policy Statement. This process will require that the Secretary of State must then carry out a statutory consultation before laying a revised or unamended draft Statement before Parliament for approval.

The Government's view is that it is also important for the Government to be able to make swift changes to the Statement when needed. For this reason, we have introduced provisions in new section 4E which allow revisions to the Statement to be made within that 5-year period and allow the Secretary of State, having consulted the

⁵ <https://questions-statements.parliament.uk/written-statements/detail/2021-09-15/hcws290>

Speaker's Committee on the Electoral Commission (SCEC) on the matter, to disapply the requirement to do a statutory consultation on these changes before laying the revised Statement for Parliamentary approval. This is because it would not be reasonable to require a statutory consultation for all potential changes to the Statement. Some of these changes will not be consequential enough to warrant a statutory consultation in addition to being already subject to parliamentary approval. It is therefore important to ensure that the revision process is flexible enough to allow the Government to make swift changes reflecting changing Government priorities whilst also maintaining appropriate levels of parliamentary scrutiny. The Secretary of State will nevertheless have to inform the statutory consultees of any proposed changes. The Government does not consider that further guidance on this is required as the clause already clearly delineates the obligations outlined above.

Role of the SCEC

The powers and duties of the SCEC are defined in the Political Parties, Elections and Referendums Act 2000 (PPERA) and include a duty to report to the House of Commons on the exercise of its functions.

With regards to the Commission's ability to depart from the guidance as set out in the Statement, Clause 13 introduces a power for the SCEC to examine the performance by the Commission of its duty to have regard to the Strategy and Policy Statement but it does not confer on the Committee a duty or power to enforce or direct the Commission's compliance with its duty under new section 4B(2). If the SCEC exercises its ability to examine the Commission's performance against that duty, then the SCEC will be required to report on how it has exercised that function in line with the existing reporting requirements in PERA. The Government's view is that the SCEC may therefore choose to convey its views on the Commission's duty to have regard to the Statement in this Report. Further, under Section 3(1) to the Schedule 2 of PERA, the SCEC is able to determine its own procedure.

With regards to scrutiny of the Statement in both Houses and the stages of the designation process, as outlined in new section 4C, the Strategy and Policy Statement will be subject to parliamentary approval using the affirmative resolution procedure before being designated. Both Houses of Parliament will therefore have the opportunity to debate the Strategy and Policy Statement before determining whether to approve or reject the resolution in full. The length of these debates will be determined closer to the time following the procedural conventions in each House.

I can also confirm that the normal grounds of judicial review will apply to the Strategy and Policy Statement.

Independence of the Commission: Check and Balances

Our measures are necessary and represent a proportionate approach to reforming the accountability of the Electoral Commission to Parliament whilst respecting its operational independence. As stated above, the legal duty placed on the Commission to have regard to the Strategy and Policy Statement in the exercise of its functions does not replace or undermine its other statutory duties.

Further, the Government is clear that the Strategy and Policy Statement must always be subject to the checks and balances that lie in the approval of Parliament. This is why we have introduced a number of provisions that provide a greater role for Parliament in scrutinising the Commission and in approving the Statement: it will be subject to a statutory consultation with key stakeholders (including the Speaker's Committee and the Commission itself) before being submitted to parliamentary approval.

Discussions with devolved administrations

As you will be aware, the Welsh and Scottish Ministers have now advised the Senedd and Scottish Parliaments to withhold legislative consent for this measure. We will be writing back to the devolved administrations shortly to confirm next steps with regards to the devolved aspects of the Bill.

Criminal proceedings

For convenience, I have grouped answers to the Committee's four questions on clause 15 below as they relate to similar matters.

As the Committee will be aware from Chloe Smith's Statement on 17 June (HCWS100)⁶, the purpose of the clause is to maintain the existing role of the Crown Prosecution Service (CPS) and Public Prosecution Service in Northern Ireland (PPS) in bringing prosecutions under electoral law by clarifying the extent of the Electoral Commission's powers. The Government's view is that this is necessary because the Commission has previously publicly stated in its Interim Corporate Plan 2020/21-2024/25 its intention to develop a prosecutorial capability that would allow it to investigate and bring suspected offences directly before the courts.

While the Commission considers that the current legislation provides scope for it to develop this function, this has never been explicitly agreed by the Government or Parliament. The Government's view is that this could risk wasting public money whilst also duplicating the work of the prosecution authorities who are already experts in this domain. The Government therefore considers it necessary to amend paragraph 2 of Schedule 1 to PPERA to expressly remove the potential for the Commission to bring

⁶ <https://questions-statements.parliament.uk/written-statements/detail/2021-06-17/hcws100>

criminal prosecutions in England, Wales and Northern Ireland. This will not apply in Scotland where there is already a single prosecutorial authority.

This clause will not amend any of the Commission's other existing powers as the Commission will continue to have a wide range of investigatory and civil sanctioning powers available to it. It will also remain able to refer criminal matters to the police.

The Committee on Standards in Public Life recently published its report on 'Regulating Election Finance'⁷ in which it found that there was no broad support for the Commission developing a prosecution capability and that it may not increase the number of prosecutions. This is because evidence gathered by the Committee suggests the low number of prosecutions for those offences that are not enforceable by civil sanctions is due to a majority of cases not meeting the criminal standard of proof and threshold for prosecution.

The Government is committed instead to supporting the police as necessary to enforce electoral regulation proactively and effectively and as stated in the Government's response⁸ to the Committee on Standards in Public Life's report, the local nature of offences under the Representation of the People Act 1983 means that it is sensible for investigations to lie with local forces police, rather than being run on a national scale. The Government will consider further the Committee's findings and recommendations, including on enforcement of electoral law.

Regulation of political finance

CSPL report recommendations

As Chloe Smith set out in her Statement⁹ on 15 September, the Government intends to look at all the recommendations in the CSPL report alongside other recommendations set out in similar reports, including the forthcoming report from the Public Administration and Constitutional Affairs Committee into the work of the Electoral Commission, as part of further work examining the regulatory framework for elections, beyond the Elections Bill.

It is important that the rules around electoral finance are kept under review and I welcome the recommendations in the CSPL report. However, electoral law is complex and it is important to do the necessary work to ensure any changes are workable and avoid unintended consequences - as we have already done for measures in the

⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999636/CSPL_Regulating_Election_Finance_Review_Final_Web.pdf

⁸<https://www.gov.uk/government/publications/government-response-to-regulating-election-finance/government-response-to-regulating-election-finance>

⁹<https://hansard.parliament.uk/Commons/2021-09-15/debates/21091558000005/ElectionFinanceAndPolicy#contribution-A2F9D1C7-D100-4ED4-8FAD-7D730C0DEC4E>

Elections Bill. For this reason, we intend to consider whether the recommendations made in the report should be implemented in the longer term.

As noted in the Government response to the CSPL report¹⁰, the Elections Bill is in fact already delivering on some of the recommendations in the report, in relation to asset and liability declarations for newly registered political parties and a restriction on foreign third-party spending.

Notional Expenditure

Consultation with practitioners on the measures

The proposed amendment to the rules on notional expenditure are in response to calls from across the political spectrum for clarification of the law in this area. I am pleased the proposals have been broadly welcomed. My officials have engaged with various stakeholders during the development of the policy, including holding a workshop with the members of the Parliamentary Parties Panel, to gather feedback on these proposals. We have taken their views on board when preparing this clarification of the law. We will continue to work with relevant stakeholders and the Electoral Commission to ensure that this change is understood by those who need to comply with the rules.

Understanding of 'encouraged by'

One of the key aims of the policy is to ensure that a test of authorisation is incorporated into the rules on notional expenditure. However, it is important to ensure that this test does not create the risk of a loophole.

For example, if only explicit written authorisation was required, there could be a risk that benefits in kind could fall away from being reported where written authorisation is not given, but the candidate or agent still encourages use on the candidate's behalf. To reduce this risk, the proposed phrase 'authorised, directed or encouraged' covers both written authorisation and different types of verbal authorisation. This wording has been carefully chosen to cover as many scenarios as possible and ensure that no expenses which should be reported can fall away, either purposefully or otherwise. Authorisation, direction or encouragement is anything that can be reasonably regarded as such and any potential breaches of the law would be considered according to the facts of each case.

Through this amendment to the law, we are making it clear that candidates and agents are not liable for benefits in kind they were unaware of, did not use or did not authorise,

¹⁰<https://www.gov.uk/government/publications/government-response-to-regulating-election-finance/government-response-to-regulating-election-finance>

direct or encourage another person to make use of on their behalf. We are satisfied that the drafting achieves this aim.

Joint Campaigning

The proposed rules on joint campaigning between political parties and third-party campaigners are an extension of the existing rules on joint campaigning that apply to third-party campaigners. The Electoral Commission already provides guidance on what constitutes working together as part of a common plan or joint campaign and have also worked in collaboration with campaigners to produce guidance on third-party campaigning. The Commission is also available to provide advice to campaigners who are unsure of the rules. We fully expect that the Commission will update their guidance to cover any new rules introduced by the Elections Bill and continue to work with relevant stakeholders to ensure that guidance is useful.

Written Ministerial Statements of 15th September - Inclusion of First Past the Post measures in the Bill

Supporting the use of the First Past the Post (FPTP) voting system in elections for all Police and Crime Commissioners (PCCs), Combined Authority and local authority Mayoral and London Mayoral elections is a long-standing Government commitment.

FPTP is a more straightforward way of electing representatives, which is well understood by voters. Moving to FPTP for all PCC and above-mentioned mayoral elections will make it easier for the public to express a clear preference and strengthen accountability. It also reflects that transferable voting systems were rejected by the British people in the 2011 nationwide referendum.

The Home Secretary announced in March 2021, at the conclusion of Part One of the PCC Review, the Government's intention to introduce legislation to change the voting system for PCCs, the Mayor of London and Combined Authority Mayors when Parliamentary time allowed. The Elections Bill presents the best opportunity to ensure that this commitment is fulfilled ahead of the next elections for PCCs, the Mayor of London and a number of combined authority mayors in 2024, providing ample notice to the electorate, electoral administrators and all future candidates. The Bill also presents us with the opportunity to deliver on the Government's manifesto commitment to FPTP in respect of local authority mayors.

A motion has been passed enabling these amendments to be considered by the Bill Committee. The measures will receive scrutiny in the ongoing Public Bill Committee sessions in the usual way, as well as in the House of Lords, and we welcome views and inputs from parliamentarians as the legislation progresses.

Turning to the expected impact of these changes, moving to FPTP will increase the simplicity of voting for electors and provide a modest reduction in the costs of the relevant polls. Removing the potential for a second round of counting will also mean

that a decision will be reached on the first round every time and preclude a second round having to take place, making the process more efficient overall. Any supporting analysis would, as appropriate, be included in the Impact Assessment for the Bill.

I look forward to continuing discussions on the Bill at the next set of Commons Committee scrutiny sessions.

I am copying this letter to the Secretary of State for Levelling Up, Housing and Communities and the Chancellor of the Duchy of Lancaster.

Yours Sincerely,

A handwritten signature in black ink, reading 'Kemi Badenoch'. The signature is written in a cursive, flowing style with a large initial 'K'.

KEMI BADENOCH MP

PACAC (Public Administration and Constitutional Affairs Committee)

House of Commons · London SW1A 0AA

Tel 020 7219 3268 Email pacac@parliament.uk Website www.parliament.uk/pacac

Rt Hon Michael Gove MP
Secretary of State
Department for Levelling Up, Housing and Communities
4th Floor, Fry Building
2 Marsham Street
London
SW1P 4DF

21st September 2021

Dear Secretary of State,

Elections Bill – follow up to the oral evidence session of 14th September

On 14th September, Chloe Smith MP, the then Minister for the Constitution and Devolution, gave [oral evidence](#) to PACAC on the Elections Bill, during which she committed to follow up outstanding issues with the Committee. Following the changes to Ministerial roles and recent developments that will impact the scope of the Elections Bill, I am writing to you to seek further information on the points set out below.

Consultation and parliamentary scrutiny of the Bill

Noting concerns expressed to my Committee about limited consultation of key measures proposed in this Bill prior to its publication, the complexity of the Bill and the speed with which it is being progressed through Parliament, could you please:

- Confirm whether the Government will commit to placing a duty to conduct post-legislative scrutiny on the face of the Bill via amendment; and
- Provide the dates on which the Bill was shared with the devolved administrations ahead of publication?

Voter ID

- In her letter to the Committee (8th September) and oral evidence to the Committee, Chloe Smith said that voter fraud in NI had been ‘virtually’ eliminated, but was unable to give numbers for voter ID fraud. Could you please provide the voter fraud data for Northern Ireland since 2003?
- Chloe Smith was also unable to provide data on the number of people who have been unable to vote in Northern Ireland elections due to the requirement of voter ID. The Electoral Commission estimates that around 25,000 people did not vote due to the photo voter ID requirement in the 2003 Assembly election. Could you provide data on subsequent elections in Northern Ireland and, if not, we ask that

you to explain why this has not continued to be monitored/was not monitored alongside the Government's voter ID pilots in 2018 and 2019.

- Chloe Smith argued that personation is a crime of deception and that voter ID would prevent personation. When asked about people who voted with fake ID, she said this would be a different crime of 'falsifying identification'. Could you please confirm to the Committee whether voting with fake ID would be a crime of personation and falsifying identification, or would only be a crime of falsifying identification?
- Please can you provide the Committee with data on the scale of false identification in the UK and research that the Government has carried out into the likelihood of fake ID being used to vote.
- Please can you confirm whether youth passes and concessional railcards would be a valid form of photo ID under the Bill.
- The Government's survey said that 31% of voters would apply for a voter ID card. Could you confirm, as per the Government's estimates set out in the Impact Assessment, that if 31% did apply for a voter ID card, the cost of voter ID would be around £450 million?
- Chloe Smith raised concerns about the survey which produced the 31% figure. Could you provide details of what additional surveys and other research has been carried out or the Government intends to carry out in this regard?
- Could you confirm the percentage of people in Northern Ireland who have an electoral ID card?

Proxy voting

- The Government has data on the number of people who hold four or more proxy votes in Northern Ireland. Chloe Smith committed to finding out whether the Cabinet Office had the power to find out how many people have four or more proxy votes in the rest of the UK. Please can you confirm whether the Cabinet Office (or another Government department) has this power and, if so, when this information could be provided?

Overseas voters

- Chloe Smith highlighted to the Committee that the Government's manifesto commitment was not just to remove the 15-year limit on overseas voters, but also to make it easier for people overseas to vote. What measures do you propose to include in this Bill (via amendment) to address this issue, and if there are no plans to amend this Bill, how does the Government intend to meet this commitment?

The Electoral Commission

- How does the Government intend to monitor how the proposals set out in the Bill will impact upon public confidence in the Electoral Commission, and what criteria or benchmarks will the Government use in this regard?
- In respect of the scope of the Statement and the Commission's duty to 'have regard to' the Statement when carrying out its functions, can you confirm that this is a substantive duty placed on the Electoral Commission and explain what this substantive duty entails?

- We note the illustrative Strategy and Policy Statement shared with Parliament on 15th September. Please can you explain its legal status and the extent to which this could be relied on by the Electoral Commission or others before the courts to ensure the Commission's operational independence?
- Clause 4C(3)(a) states that the Secretary of State must make whatever changes to the draft Statement he/she considers "necessary" in light of responses to the consultation. Why is "necessary" not defined in the Bill?
- Clause 4E(4) gives the Secretary of State the power to disapply the consultation requirements in respect of revising the Statement in certain cases. Chloe Smith agreed *"that that power would be exercised sparingly, possibly in cases simply of triviality or extreme urgency... and it would not be carte blanche for the Secretary of State to override the consultation process generally"*. Can you provide further examples of where the Secretary of State can set aside the consultation when revising the Statement and whether further guidance will be issued in this regard?
- The Explanatory Notes accompanying the Bill explain that the Electoral Commission *"will be able to depart from this guidance [set out in the Statement] if it felt that was justified or if it had a statutory duty to fulfil"*. What happens if the Electoral Commission considers it is justified in not complying with the Statement or is not obliged to comply with certain elements or guidance set out in the Statement and the Speaker's Committee disagrees?
- The Statement will undergo a consultation process with statutory consultees and be subject to Parliamentary approval via the affirmative procedure on a non-amendable motion (which means the Statement can either be accepted or rejected in full by Parliament within a 40-day period). In respect of parliamentary input into, and approval of, the Statement, Chloe Smith stated during the oral evidence session that:
 - *"I am envisaging significant debate on it...and that by that mechanism Parliament is fulfilling its role of being able to satisfy itself of what is in the [S]tatement."*
 - *"You will have debate, experience and insight flowing into the [S]tatement from the Chamber of the Commons as a whole and you will have SCEC then being able to use that statement at a much more granular level"*.
 - *"Parliamentary debate has a value in its own right, and on the natural function of being able to influence the Government as to what needs to go into the statement."*

Please can you clarify how the Government will facilitate debate of this Statement in both Houses and at what stage in the proposed designation process?

- Can you confirm that the parameters of the Statement would be capable of judicial review if they were to purport to impinge on the operational independence of the Commission?
- Can you explain the checks and balances that the Government has in place to prevent against potential abuse of the operational independence of the Electoral Commission?
- Chloe Smith committed to write to the Committee on the outcome of the Government's discussions with the devolved administrations on the Statement and whether or not they would approve a legislative consent motion. Please could you provide an update in this regard.

Criminal proceedings

- Clause 15 of the Bill prevents the Commission from developing prosecution capabilities in England, Wales and Northern Ireland. Why does the Government want to remove the power of the Electoral Commission to develop its prosecution function?
- Please could you share the Government's analysis on which body/bodies it considers is best placed to investigate and bring forward criminal prosecutions under PPERA and why.
- Please could you confirm whether more resource and training will be provided to the police to investigate alleged criminal offences under PPERA?
- What consideration has been given to developing a specialist police force or unit, at a national level, which would effectively lead the policing response in this area?

Regulation of political finance

- In respect of the Committee on Standards in Public Life (CSPL) report on Regulating Election Finance of 7th July, the then Minister noted “[i]t is not always possible to turn on a sixpence in the middle of a Bill’s proceedings, to suddenly include 50 recommendations that have been made a few months beforehand. That is just a rather boring process point but I think it is fair to say here.” Following the [Government’s response to the CSPL’s Report of 15 September](#), please could you clarify which of the CSPL’s recommendations not already included in the Bill the Government will introduce via amendment (given that they were not included at introduction), and when or how the Government proposes to give legislative effect to recommendations that will not be included in the Bill?
- The proposed changes to notional expenditure appear to be broadly welcomed. To what extent has the Government consulted practitioners who will be using this legislation going forward to make sure it has clarity of purpose and can be understood and complied with? Furthermore, what is the Government’s assessment of whether the term ‘encouraged by’ could lead to confusion and/or need further clarification?
- Written and oral evidence to this Committee broadly supports the principle of extending the reporting requirements for spending on joint campaigns to include political parties and third-party campaigners who are working together at an election, but concern has been expressed that the current joint spending do not work and should be removed from the Bill, pending a review of the rules. What changes to the joint spending rules would you support to increase clarity for parties and campaigners?

Written Ministerial Statements of 15th September

On 15th September, the then Minister for the Constitution, Chloe Smith, issued two Written Ministerial Statements in relation to Election Finance and Policy ([HCWS290](#)) and Elections Systems ([HCWS289](#)).

We note that during the oral evidence session, Chloe Smith alerted the Committee of the Government’s intention to lay an illustrative Statement and to respond to the CSPL’s report, as set out in HCWS290.

However, Chloe Smith did not inform the Committee of the Government's intention to amend the Bill by including additional measures on the voting system for all Police and Crime Commissioner, Combined Authority Mayoral and London Mayoral elections. As a result, the Committee was denied an important opportunity to explore the timing, purpose and implications of the proposed amendments. Please can you explain the Government's reasons for seeking to amend the scope of the Bill at this stage, including an assessment of the expected impact of these changes.

Furthermore, given that this instruction—if acted upon by the Elections Bill Committee—will extend the scope of the Bill, we reiterate the importance of the Government giving due consideration to amendments that will assist in supporting the stated aims of the Bill. The Committee is clear that this should include a statutory commitment to post-legislative scrutiny of the Bill and that the Government should table an amendment to that effect at the earliest opportunity.

Given the pace at which this Bill is progressing, and the significant changes to be introduced to this Bill, the Committee expects a comprehensive response to the points set out above by 30th September.

I am copying this letter to Rt Hon Stephen Barclay, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office. A copy of this letter and your response will be placed in the public domain.

Yours sincerely,
William Wragg.

William Wragg MP
Chair, Public Administration and Constitutional Affairs Committee